2007-05782/

FOIP FOLIO

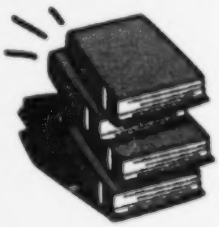
SASKATCHEWAN

April 2007

OIPC DIRECTOR OF COMPLIANCE

Diane Aldridge, our senior Portfolio Officer, has been appointed as our first **Director of Compliance**. As a result of an internal reorganization, Diane will now be responsible for overseeing all Portfolio Officers and managing the case load of access reviews and privacy complaints. Her contact information is (306) 798-1602 or daldridge@oipc.sk.ca. This appointment is consistent with our revised OIPC Business Plan and the renewed focus on our backlog of case files.

WORKERS' COMPENSATION BOARD INVESTIGATION REPORT F-2007-001



The Complainant initiated a claim under *The Workers Compensation Act, 1979* for compensation arising from what he alleged was a workplace injury. The Saskatchewan Workers' Compensation Board (WCB) collected, used and disclosed both personal information under *The Freedom of Information and Protection of Privacy Act* (FOIP) and personal health information under *The Health Information Protection Act* (HIPA) of the Complainant. The Commissioner found that the WCB disclosed to the Complainant's employer more personal information and personal health information than was necessary. The Commissioner further found that the WCB failed to adequately safeguard the Complainant's information when it sent copies of his personal information and personal health information to the Complainant by ordinary mail. That package was not received by the Complainant and cannot be accounted for. The Commissioner recommended that WCB should make reasonable efforts to retrieve documents improperly disclosed to the employer in order to destroy them and should officially apologize to the Complainant for the loss of the package.

The Commissioner, after reviewing the policies and procedures of WCB intended to protect the privacy of claimants and the confidentiality of their personal information and personal health information, concluded that the WCB in certain key areas had not met the requirements of HIPA, of FOIP or of the *Overarching Personal Information Privacy Framework for Executive Government*.

The Commissioner recommended a number of revisions to:

- the organization of WCB to manage the 'access and privacy file';

WORKERS' COMPENSATION BOARD INVESTIGATION REPORT F-2007-001 (cont'd)

- the policies and procedures of WCB for the handling of personal information of claimants; and
- the website and public information materials of WCB to make them more helpful to the public.

SASKATCHEWAN GOVERNMENT INSURANCE FAILS TO SATISFY BURDEN OF PROOF

The OIPC has issued its Report F-2007-002. The Applicant requested a review of the decision of Saskatchewan Government Insurance (SGI) to deny access to nine documents in the applicant's file under FOIP. SGI claimed sections 17(1)(b)(i) and 22 of FOIP to support the decision to deny access. The Commissioner found that SGI did not meet the burden of proof mandated by section 61 of FOIP and recommended release of the withheld records.

REFLECTIONS ON PRAIRIE HEALTH INFORMATION PRIVACY DAY 2007 AND SASKATCHEWAN ACCESS AND PRIVACY CONFERENCES

Saskatchewan Access & Privacy Conference
Exploring Saskatchewan's Freedom of Information & Protection Of Privacy Legislation
Prairie Health Information Privacy Day 2007

We express our thanks to members of the Steering Committee for the Prairie Health Information Privacy Day 2007 (**Leroy Brower** of Alberta Information and Privacy Commissioner's office, **Gail Perry** of Manitoba Ombudsman's office and **Diane Aldridge** of the OIPC).

Thanks also to the Steering Committee for the Saskatchewan Access and Privacy Conference (**Neil Robertson** of City of Regina, **Jayden Stephens** of Saskatoon Health Region, **Duane Mombourquette** of the Access and Privacy Branch of Saskatchewan Justice, **Trish Livingstone** of Saskatchewan Health, **Tim Hutchinson** of University of Saskatchewan, Archives, and **Diane Aldridge** of the OIPC).

Presenters, who have consented, will have their materials posted to the conference websites, http://www.verney.ca/phipd2007/ (Prairie Health Information and Privacy Day 2007) or http://www.verney.ca/sapc2007/ (Saskatchewan Access and Privacy Conference).

$10,000 FINE IN ALBERTA PRIVACY BREACH CASE

At the inaugural Prairie Health Information Privacy Day 2007 held in Regina April 16th, Alberta Commissioner **Frank Work** opened the conference with a report on Canada's latest conviction for breach of privacy under health information privacy legislation.

The case involved a clerk who worked at a medical office in Calgary, and was involved in an affair with a married man. The man's wife was being treated for cancer at the time. The clerk accessed the wife's information 17 times on 6 different days over a 9 month period. The information she obtained included lab results, biopsy results, and CT scans. This was in contravention of Alberta's *Health Information Act* (HIA).

The clerk appeared in Calgary court on Friday, April 13th where she pleaded guilty and was fined $10,000. According to Commissioner Work, "[t]*his is a very serious matter, and health care providers must know that surfing records for personal purposes will not be tolerated and individuals will be prosecuted.*" The clerk stated that she was sorry for what she had done, but was unaware that she was doing anything wrong. In imposing the fine, Judge Manfred Delong said he had difficulty understanding her explanation, and noted that he could have fined her $10,000 for each of the 6 incidents, for a total of $60,000.

This case, and the hefty fine that went with it, sets an important precedent. It should serve as a reminder to all trustees of the need to take great care with personal health information.

The Alberta offence in question has its Saskatchewan counterpart in section 64 of HIPA.

HIPA, *THE GUNSHOT AND STAB WOUNDS MANDATORY REPORTING ACT*, NEW HIPA REGULATIONS, MATERIALS AND TRAINING SESSIONS

If you are a Saskatchewan health information trustee, you may be feeling a little overwhelmed with a lot of new information about to whom you can disclose personal health information and when. What's more, you are probably getting advice from different sources as to what you should or should not do in order to comply with your statutory requirements. The new HIPA regulations (disclosure to police) have already gone into force. *The Gunshot and Stab Wounds Mandatory Reporting Act* has been passed by the Assembly and will go into force as soon as the accompanying Regulations have been completed. This will likely happen in May or June.

HIPA, *THE GUNSHOT AND STAB WOUNDS MANDATORY REPORTING ACT*, NEW HIPA REGULATIONS, MATERIALS AND TRAINING SESSIONS (cont'd)

In making sense of the new regulations, there are two key conditions that haven't changed:

(1) The responsibility under HIPA is vested in trustee organizations. Each trustee organization has responsibility to ensure that it is compliant in terms of the personal health information in its custody or under its control.

(2) The OIPC is the body with explicit statutory authority to interpret HIPA and oversee compliance by those trustees. This is subject to a limited right of appeal to the Court of Queen's Bench.

As usual, the OIPC will provide advice and commentary to trustees as to how we will apply and interpret the new regulations. We will be offering advice on the way that we will be interpreting the new HIPA Regulations by means of the FOIP FOLIO and additional information that will be posted to our website, www.oipc.sk.ca . If you have questions about interpretation you are welcome to call one of our Portfolio Officers at (306) 787-8350 or toll free 1-877-748-2298.

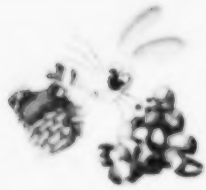
CALL FOR NOMINATIONS FOR THE CHIEF JUSTICE E.M. CULLITON 'RIGHT TO KNOW' AWARD

Last year, in our June 2006 FOIP FOLIO, we informed you of our plans to celebrate the internationally recognized 'Right to Know' Day (September 28) in Saskatchewan. As with last year's events, we will be working with a steering committee during the week of October 1, 2007 to raise awareness of citizens' rights to government information in the interests of open, accountable and transparent government.

Also again this year, the steering committee is seeking nominations for the *Chief Justice E.M. Culliton 'Right to Know' Award*. Last year, the City of Regina received the inaugural award.

The intent of the award is to celebrate and to recognize leadership in promoting open and accountable government. To be eligible, the body must be a Saskatchewan government institution (provincial government department, Crown Corporation, board, commission or agency) or a local authority (regional health authority, municipality, library, school, university or college). The nominee should be an agency that has demonstrated some or all of the following qualities:

- Leadership in promoting public access to the agency's information;



CALL FOR NOMINATIONS FOR THE CHIEF JUSTICE E.M. CULLITON 'RIGHT TO KNOW' AWARD (cont'd)

- Creativity in building public awareness of access to information;
- Excellence in orientation of, and service training in, employee access to information responsibilities; and/or
- Innovation in the development of tools to promote or facilitate access to information.

The deadline for nominations is **Friday, September 14, 2007**.

Nominations can be self-initiated or third party. The nomination should include:

- a letter of nomination (up to 1,000 words), and
- samples of materials relevant to the nomination (testimonials or other material).

The Award will be presented during 'Right to Know' Week, October 1 to 5, 2007.

Nominations should be sent to the 'Right to Know' Committee, c/o #503, 1801 Hamilton Street, Regina, SK S4P 4B4 or fax: (306) 798-1603 or email: sbarreth@oipc.sk.ca.

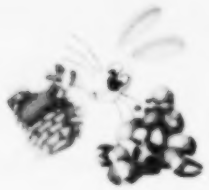
If you are interested in joining the steering committee or would like more information about 2007 Right to Know Week events, contact us at (306) 787-8350.

SWIFT INVESTIGATION REPORT OF FEDERAL PRIVACY COMMISSIONER

Canada's Privacy Commissioner, **Jennifer Stoddart**, this month released her report on whether Canadian banks violated the federal *Personal Information Protection and Electronic Documents Act* (PIPEDA) when they disclosed personal information of Canadians to US authorities pursuant to the Terrorist Finance Tracking Program.

SWIFT is the financial industry-owned co-operative supplying secure, standardized messaging services and software to over 7,900 financial institutions in more than 200 countries. The complaint related to practices of SWIFT of disclosing data to the US Department of the Treasury since shortly after 9/11. This was done pursuant to subpoenas issued by the US President and Congress. This included financial data held by Canadian banks. The two key issues involved in the complaint were:

1) Does PIPEDA apply to SWIFT's collection, use and disclosure of personal information in the course of its Canadian operations?
2) Was the personal information collected by SWIFT from Canadian banks disclosed to US authorities in accordance with PIPEDA?



SWIFT INVESTIGATION REPORT OF FEDERAL PRIVACY COMMISSIONER (cont'd)

The Commissioner concluded that SWIFT was subject to PIPEDA and the jurisdiction of her oversight office. She further concluded that SWIFT's actions did not contravene PIPEDA.

Commissioner Stoddart requested however that the appropriate Canadian officials work with their US counterparts to encourage the US government to use its anti-money laundering/anti-terrorism financing regime instead of the subpoena route. Such a course of action would provide a greater degree of transparency and built-in privacy protections than would the use of subpoenas.

Commissioner Stoddart also observed as follows:

> *While I do not underestimate the obvious and global problem of terrorist financing, we must at the same time be cognizant of exactly what it is we are protecting when we fight terrorists and their financial backers. We are protecting our freedoms and rights and surely the right to privacy and the reasonable protection of personal information is one of the rights we do not want to diminish in the name of fighting terrorism.*

This very interesting report can be accessed at www.privcom.gc.ca. If you want to see a detailed contrast of the approach taken by European Union Article 29 Working Party (a committee that reviews issues associated with the implementation of the EU Data Protection Directive) and the approach evident in the Canadian report, you could check out the April 3, 2007 issue of the *Privacy Scan* published by Murray Long & Associates Inc. The website of *Privacy Scan* is www.privacyscan.ca.

FUTURE EVENTS

May 1-4, 2007 – *17th Conference on Computers, Freedom & Privacy* – Montreal, Quebec (visit www.cfp2007.org/live for details)

May 2, 2007 – *Privacy and Data Protection Canada 2007* – Toronto, Ontario (visit www.transatlantic-events.com for details)

May 30-31, 2007 – *Privacy Compliance – Meeting Your Obligations and Challenges* – Toronto, Ontario (contact 1-877-927-7936 or visit www.CanadianInstitute.com for details)

June 13-15, 2007 – *Access and Privacy: From Potential to Performance* – Edmonton, Alberta (visit www.accessandprivacy.com for details)

September 20-21, 2007 – *Private Sector Privacy in a Changing World (PIPA Conference 2007)* – Vancouver, British Columbia (visit www.verney.ca/pipa2007/ for details)

October 25-26, 2007 – *The Revealed I – a Conference on Privacy and Identity* (visit www.idtrail.org/content/section/11/95/ for details)

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